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Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Security Council
Sixty-fourth year

Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit herewith the report entitled "The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences" (see annex).

I should be grateful if you would have the present letter and the aforementioned report circulated as a document of the General Assembly, under agenda items 14 and 18 of its sixty-fourth session, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

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Annex to the letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences

I. Introduction

1. At the end of 1987, the Armenian Soviet Socialist Republic (hereinafter Armenian SSR) openly laid claim to the territory of the Nagorny Karabakh Autonomous Oblast (hereinafter NKAO) of the Soviet Socialist Republic of Azerbaijan (hereinafter Azerbaijan SSR). That marked the beginning of the expulsion of Azerbaijanis from the Armenian SSR and the NKAO, as well as initiated taking a number of illegal decisions aimed at unilateral secession of the NKAO from the Azerbaijan SSR.

2. The collapse of the USSR finally freed the hands of the Armenian nationalists. At the end of 1991 and the beginning of 1992 the conflict reached the military phase. Armenia began combat operations on the territory of Azerbaijan. Over the period of 1992-1993 a considerable area of Azerbaijan was occupied by Armenia, including Nagorny Karabakh and seven adjacent districts. The war unleashed against Azerbaijan led to the deaths and wounding of thousands of people; hundreds of thousands became refugees and were forcibly displaced and several thousand disappeared without a trace. Most serious international crimes have been committed in the course of the war.

3. In general, the legal and political constituents for the settlement of the conflict are based on the norms and principles of international law, laid down in the relevant Security Council and General Assembly resolutions, as well as in the appropriate documents and decisions of the Organization for Security and Cooperation in Europe (OSCE) and other international organizations. These documents confirm, inter alia, that the occupation by force of the territories of the Republic of Azerbaijan constitutes a flagrant breach by the Republic of Armenia of the territorial integrity of the Republic of Azerbaijan.

4. By letters dated 22 and 26 December 2008, and 23 January and 17 February 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the Republic of Azerbaijan submitted the reports on "the legal consequences of the armed aggression of the Republic of Armenia against the Republic of Azerbaijan",[1] on "the fundamental norm of the territorial integrity of states and the right to self-determination in the light of Armenia's revisionist's claims",[2] on "the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory"[3] and the information entitled "Support by Member States of the United Nations and international

[1] A/63/662-S/2008/812, 24 December 2008.
[2] A/63/664-S/2008/823, 29 December 2008.
[3] A/63/692-S/2009/51, 27 January 2009.

organizations to Azerbaijan's position on the conflict in and around the Nagorny Karabakh region of Azerbaijan",[4] respectively.

5. In these documents the Republic of Azerbaijan formulated its view and approach as to the issues pertaining to the resolution of the conflict on the basis of the applicable norms and principles of international law.

6. The Permanent Representative of Armenia to the United Nations by his letter dated 23 March 2009 circulated the memorandum entitled "Nagorny Karabakh: peaceful negotiations and Azerbaijan's militaristic policy"[5] that purports to be a response to the aforementioned documents submitted by Azerbaijan.

7. In reality, this document represents yet another attempt of the Republic of Armenia to mislead the international community by means of blatant falsification of facts and thus to justify its annexationist policy.

8. It is curious that while listing in the aforementioned memorandum a number of declaratory documents on the conflict, the Armenian side omits referring to the relevant resolutions of the Security Council[6] and General Assembly,[7] which are the most authoritative rulings on the problem, as well as to other important documents adopted by international organizations, such as a statement by the OSCE Chairman-in-Office at the OSCE Lisbon Summit of 1996, supported by all OSCE participating states except Armenia, and resolution 1416 (2005) adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe.

9. On 2 November 2008, the Presidents of Armenia, Azerbaijan and the Russian Federation signed a Joint Declaration in Moscow. This document states, inter alia, that the signatory states "will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles and norms of international law and the decisions and documents adopted in this framework, which will create favorable conditions for economic development and comprehensive cooperation in the region".

10. It should be noted in this regard that in the aforementioned memorandum circulated at the request of Armenia the document signed by the heads of three states is referred to as the "Declaration on Nagorny Karabakh conflict",[8] though, in reality, it is entitled "Joint Declaration of the Republic of Armenia, the Republic of Azerbaijan and the Russian Federation".[9] Further to this misinterpretation, whereas the signatory states declare in the Joint Declaration that "they will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles of international law and the decisions and documents adopted

[4] A/63/730-S/2009/103, 20 February 2009.

[5] A/63/781-S/2009/156, 24 March 2009.

[6] Resolutions 822 (1993) dated 30 April 1993; 853 (1993) dated 29 July 1993; 874 (1993) dated 14 October 1993 and 884 (1993) dated 12 November 1993.

[7] Resolutions 48/114 dated 20 December 1993, 60/285 dated 7 September 2006, and 62/243 dated 14 March 2008.

[8] A/63/781-S/2009/156, p. 5, para. 10.

[9] See the annex to the letter dated 10 November 2008 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, S/2008/702.

in this framework ...", the Armenian memorandum drops the reference to such important words as "the decisions and documents adopted in this framework" and thus grossly distorts the content of the document signed by the heads of three states.[10]

11. The Joint Declaration clarifies that "a political settlement ... will create favorable conditions for economic development and comprehensive cooperation in the region". This indication makes speculations of the Armenian side as to the "blockade imposed on Armenia"[11] absolutely irrelevant. In fact, it confirms the validity of Azerbaijan's view, according to which any cooperation with Armenia is unacceptable unless this state clearly demonstrates its constructiveness on the settlement of the conflict resulting in putting an end to the occupation of the territories of Azerbaijan.

12. By disregarding the resolutions of the Security Council and General Assembly, with which the primary responsibility for maintenance of international peace and security lies, and by misinterpreting the essence of other relevant documents, including the Joint Declaration signed in Moscow by the Presidents of Armenia, Azerbaijan and the Russian Federation, Armenia clearly demonstrates who is actually pursuing the destructive and militaristic policy.

13. Armenia blames Azerbaijan for increasing its military budget and violation of arms limitation norms. At the same time, it omits to say that annual defence spending of Azerbaijan remains in line with overall budget increases, that Azerbaijan continues to spend a much smaller percentage of its gross domestic product (GDP) on the army than Armenia and that the size of the armed forces of Azerbaijan is proportional to its population, territory and length of borders and remains less than Armenia's.[12] Armenia also passes over in silence that the arms control mechanism is not effective in the occupied territories of Azerbaijan and that it deploys, beyond international control, a great number of armaments and ammunitions in these territories.

14. Furthermore, Armenia acknowledges in the said memorandum that it considers the Nagorny Karabakh problem as one that dates back to the distant past.[13] Against this background, it makes a series of historical assertions that distort the very essence of the problem and carry a danger of revisionist claims based upon historical arguments, the objective of which in fact is to substantiate the policy of territorial expansionism at the expense of not only Azerbaijan but other neighbouring states likewise. In other words, Armenia confirms that its territorial claims towards and military actions against Azerbaijan were aimed from the very beginning at seizing the territories by means of force and fundamental change of their demographic composition.

15. While accusing Azerbaijan of "anti-Armenian propaganda, instilling racial hatred and intolerance against the Armenians",[14] Armenia disregards the fact that, unlike itself, which has purged its territory of all non-Armenians and become a

[10] A/63/781-S/2009/156, p. 5, para. 10.
[11] Ibid., p. 14, para. 46.
[12] See, e.g., *Azerbaijan: Defence Sector Management and Reform*, International Crisis Group policy briefing No. 50, 29 October 2008, p. 5.
[13] A/63/781-S/2009/156, p. 7, para. 21 and further.
[14] Ibid., p. 2.

uniquely mono-ethnic state, Azerbaijan has preserved its ethnic diversity to the present day.

16. Instead of trying to contribute to restoring peace, security and stability in the region and putting an end to the protracted conflict, Armenia, which bears the primary responsibility for unleashing war against Azerbaijan, gives preference to escalation with unpredictable consequences. The stance of Armenia, as it is reflected in the aforementioned memorandum and other similar documents and statements, testifies that it is far from even thinking to engage in a sober and efficient search for peace.

17. The Republic of Azerbaijan considers the provocative attitude of Armenia and its bellicose rhetoric as an open challenge to the ongoing peace efforts and political settlement perspectives, unconcealed propaganda for war of aggression and a serious threat to regional peace and security.

18. The information below is illustrative as to the aggressive, annexationist and discriminatory policy of Armenia based on historical, ethnic and religious prejudices and aimed at creating a mono-ethnic culture both within its own country and in the occupied territories of Azerbaijan.

19. In this regard, Azerbaijan expects that Member States would convince Armenia to cease its destructive policies, to respect the generally accepted norms and principles of international law and to negotiate in good faith with a view to finding a durable solution to the conflict.

II. Historical background

20. The Nagorny Karabakh region of the Republic of Azerbaijan is part of the geographical area called Garabagh (*Qarabağ*). The name of this part of the country consists of two Azerbaijani words: "qara" (black) and "bağ" (garden).[15] The geographical area of Karabakh covers the lands from the Araz River in the south to the Kur River in the north, and from the junction of the Kur and Araz Rivers in the east to the eastern ranges of the Lesser Caucasus in the west.

21. From ancient times up to the occupation by Russia in the early 19th century, this region was part of different Azerbaijani states. On 14 May 1805, the Treaty of Kurakchay (1805) between Ibrahim Khan, Khan of Karabakh, and Sisianov, representative of the Russian Emperor, was signed. According to this treaty, the Karabakh khanate came under Russian rule.

22. The Gulustan peace treaty, signed between Russia and Iran on 12 October 1813, de jure recognized the joining to Russia of the Northern Azerbaijan khanates, with the exception of the Nakhchyvan and Iravan khanates. According to the Turkmanchay peace treaty, signed on 10 February 1828 — at the end of the second Russia-Iran war (1826-1828) — Iran confirmed its relinquishment of Northern Azerbaijan, including the Nakhchyvan and Iravan khanates.

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[15] The term "Nagorny Karabakh" is a Russian translation of the original name in Azerbaijani language — Dağlıq Qarabağ (pronounced Daghlygh Garabagh), which literally means mountainous Garabagh. In order to avoid confusion the widely referred terms "Nagorny Karabakh" or "Karabakh" will be used here, as appropriate.

23. After the signing of the Gulustan and Turkmanchay treaties a very rapid mass resettlement of Armenians in the Azerbaijani lands took place and the subsequent artificial territorial division emerged.[16] The First World War also contributed to the increase in the number of Armenians in the South Caucasus.[17] From 1828 to 1911 alone, more than 1,000,000 Armenians were resettled by Russia from Iran and Turkey in the region, including the Azerbaijani territories, and 350,000 Armenians appeared there in 1914-1916.

24. Within the Russian Empire, the territory once belonging to Azerbaijan — which includes, inter alia, the area presently covered by the Republic of Azerbaijan and the Republic of Armenia — was split under a number of legal regimes in different administrative divisions. According to the final administrative division, Azerbaijan was split among the Baku, Elizavetpol and Iravan provinces, and Zagatala okrug. The Elizavetpol province included, inter alia, the area presently under Armenian military occupation.

25. Between 1905 and 1907 the Armenians carried out a series of large-scale bloody actions against the Azerbaijanis. The atrocities began in Baku and then extended over the whole of Azerbaijan, including Azerbaijani villages in the territory of present-day Armenia. Hundreds of settlements were destroyed and wiped from the face of the earth, and thousands of civilians were barbarically killed.

26. Taking advantage of the situation following the First World War and the February and October 1917 revolutions in Russia, the Armenians began to pursue the implementation of their plans under the banner of Bolshevism. Thus, under the watchword of combating counter-revolutionary elements, in March 1918 the Baku commune began to implement a plan aimed at eliminating the Azerbaijanis from the whole of the Baku province. Apart from Baku, solely because of their ethnic affiliation, thousands of Azerbaijanis were annihilated also in the Shamakhy and Guba districts, as well as in Karabakh, Zangazur, Nakhchyvan, Lankaran and other regions of Azerbaijan. In these areas, the civilian population was exterminated en masse, villages were burned and national cultural monuments were destroyed and obliterated.

27. On 28 May 1918, the Democratic Republic of Azerbaijan was proclaimed. The Republic of Armenia was established the same day. Article 1 of the Declaration of Independence of the Democratic Republic of Azerbaijan provided that "[s]tarting from this day the people of Azerbaijan will have their sovereign rights. Azerbaijan that consists of Eastern and Southern Transcaucasia shall be a legal independent state".

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[16] See, e.g., I. Shopen, *Historical monument of the status of the Armenian oblast in the period of its annexation to the Russian Empire* (Saint-Petersburg: Publishing House of the Emperor's Academy of Sciences, 1852), pp. 636, 639-641, 706; N. Shavrov, *A new challenge to the Russian issue in Transcaucasia: Upcoming sale of Mughan to foreigners* (Saint-Petersburg: Publishing House of the Editorial Board of the Ministry of Finance Periodicals, 1911), pp. 59-60.

[17] See, e.g., *History of the Armenian people* (Yerevan: Yerevan University Press, 1980), p. 268; *Compilation of statistical data of the Caucasus* (Tiflis, 1869), volume I, chapter I, part III; *Caucasian calendar for 1917* (Tiflis: Press Office of the Governor-General E.I.B of the Caucasus, 1916), pp. 183, 219-221; *Acts of the Archeological Commission of the Caucasus* (Tiflis, 1870), volume IV, doc. 37, p. 37.

28. In 1918-1920, the Democratic Republic of Azerbaijan had diplomatic relations with a number of states. Agreements on the principles of mutual relations were signed with some of them; 16 states established their missions in Baku.

29. With the purpose of achieving the admission to the League of Nations, the Government of Azerbaijan formed on 28 December 1918 the delegation at the Paris Peace Conference headed by the speaker of parliament Alimardan bay Topchubashov. As a result of the efforts of the Azerbaijani delegation and growing threat of occupation of Transcaucasia by Soviet Russia, the Supreme Council of the Allied Powers at the Paris Peace Conference de facto recognized on 12 January 1920 the independence of the Democratic Republic of Azerbaijan.

30. In April 1919, the Allied Powers recognized the provisional General-Governorship of Karabakh, which was established by the Democratic Republic of Azerbaijan in January 1919 and included Shusha, Javanshir, Jabrayil, and Zangazur uyezds (uyezd — administrative-territorial unit of the Russian Empire, which was applied in the Democratic Republic of Azerbaijan and Azerbaijan SSR until the late 1920s) with the centre in Shusha town, to be under Azerbaijani jurisdiction, and Khosrov bay Sultanov as its governor. In 1919, the Armenian National Assembly of Nagorny Karabakh officially recognized the authority of Azerbaijan.[18] This fact completely disproves the allegations of the Armenian side that Nagorny Karabakh possessed at that time the status of "an independent legal entity"[19] or "an independent political unit".[20]

31. The population welcomed the "provisional agreement" warmly and hopefully. Celebrations were held in Shusha in honour of the agreement that brought peace and order to Karabakh. The delegation of Karabakh Armenians[21] at the meeting in Baku with Prime Minister of Azerbaijan N. Yusifbayov expressed deep gratitude to the Government of Azerbaijan for "the peaceful resolution of the Karabakh problem". The adoption of the agreement meant the failure of the policy of Armenia to declare Nagorny Karabakh the "territory of Armenia". The Democratic Republic of

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[18] Provisional agreement between the Government of Azerbaijan and the Armenians of Nagorny Karabakh, 26 August 1919 года. For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials* (Baku: Azerneshr, 1989), pp. 23-25. See also Tadeusz Swietochowski, *Russia and Azerbaijan: A Borderland in Transition* (New York: Columbia University Press, 1995), pp. 75-76.

[19] See, e.g., A/63/781-S/2009/156, p. 7, para. 23.

[20] See, e.g., *Legal aspects for the right to self-determination in the case of Nagorny Karabakh*, Annex to the note verbale dated 21 March 2005 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, E/CN.4/2005/G/23, 22 March 2005, p. 2.

[21] Note: Russia's plans to occupy Turkey also sealed the fate of the Caucasian Albanians adhering to Christianity. Caucasian Albanians are one of the ancestors of the Azerbaijani people. They had their own state, which existed from the 4th century BC to the early 8th century on the territory from the Araz River in the south to Darband in the north, had declared Christianity the State's official religion in the 4th century. After the conquest of Arabs in the early 8th century, most of the Albanians adopted Islam, while a small part adhered to Christianity. However, beginning from the early 19th century, after the signing of the Gulustan and Turkmanchay treaties, the independent Albanian Catholicosate was liquidated; its dioceses were annexed to the Armenian Echmiadzin Catholicosate and the Caucasian Albanians adhering to Christianity — with the exception of those living in the Gabala and Oghuz districts of Azerbaijan — were assimilated by Armenians. The present-day Armenian population of the Nagorny Karabakh region of Azerbaijan, with the exception of those resettled there later, mostly consists of the Armenianized Albanians.

Azerbaijan, for the first time in the South Caucasus, through guaranteeing rights of the Armenians of Nagorny Karabakh, set in practice an example of a peaceful and civil solution to the problem of minority groups.

32. Scotland-Liddel, a British journalist, wrote to London from Shusha: "[p]eace came to Karabakh. The Armenians agreed to obey the Azerbaijani government ... The Armenians tell me that there has never been such order and peace in Shusha and Karabakh before".[22] He adds further: "[b]oth people were ready to continue peacefully their course of life and would do so, if not for the intervention of agitators. I believe that — the latter are responsible for the Armenian-Tartar [read Armenian-Azerbaijani — ed.] massacre in other parts of Transcaucasia. An Armenian propagandist does its job conscientiously, as it concerns propaganda, but I am sure that their activities in Transcaucasia are mere provocation".[23]

33. All aforementioned facts testify against the allegations of the Armenian side that "[f]ollowing the collapse of the Empire, Nagorny Karabakh (with 95 per cent of Armenian population) refused to subject itself to the authority of the Democratic Republic of Azerbaijan" and that "[t]he newly proclaimed Democratic Republic of Azerbaijan resorted to military means to suppress the peaceful resolve of the people of Nagorny Karabakh for self-determination".[24]

34. However, Armenia did not give up its claim on Nagorny Karabakh and, with the view of imposing an Armenian administrative system in Nagorny Karabakh, intensified provocative actions there.

35. While the Bolsheviks were approaching the Azerbaijani borders and the major part of Azerbaijani forces was concentrated in the country's northern borders, on the night of Nowruz Bayramy (Spring Holiday) on 22-23 March 1920, a large-scale armed uprising against the Azerbaijani government was incited in Nagorny Karabakh with the direct involvement and participation of Armenia. Azerbaijani national army units were simultaneously and suddenly attacked in Shusha, Khankandi and in a number of other places. Thus, the Armenian side unilaterally violated the "provisional agreement". The insurgents, however, met with serious resistance from the Azerbaijani soldiers. The day after the uprising, Shusha was liberated of the armed bands, and the attempts of Armenia to capture Azerbaijani territories failed.

36. Armenia's territorial claims towards Azerbaijan and efforts to annex Nagorny Karabakh were an evident reality for most authors in the former Soviet Union, including Armenian ones. Thus, according to the Great Soviet Encyclopedia published in 1926, "[d]ashnaks ... stated to have claims on the Akhalkalaki and Borchaly regions of Georgia, and Karabakh, the Nakhchyvan region and the southern part of the large Yelizavetpol province, which were parts of Azerbaijan. The efforts to forcefully annex those areas caused a war with Georgia (December 1918) and a long, bloody confrontation with Azerbaijan ...".[25]

37. On 28 April 1920, the Democratic Republic of Azerbaijan was occupied by Soviet Russia and the Azerbaijan SSR was established.

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[22] State Archive of the Republic of Azerbaijan, f. 894, inv. 10, f. 103, p. 18.

[23] Ibid., p. 11.

[24] A/63/781-S/2009/156, p. 7, paras. 21-22.

[25] Great Soviet Encyclopedia (Moscow: "Soviet Encyclopedia" JSC, 1926), vol. 3, p. 437.

38. Nonetheless, in many parts of the country the Azerbaijanis offered serious resistance to the Bolsheviks, while the Azerbaijani delegation at the Paris Peace Conference continued its work to achieve de jure recognition and admission into the League of Nations. By a letter dated 1 November 1920, the head of the Azerbaijani Delegation at the Conference requested the Secretary-General of the League of Nations to submit to the Assembly of the League an application for the admission of the Democratic Republic of Azerbaijan into the full membership of the Organization.

39. In the Memorandum dated 24 November 1920, the Secretary-General of the League of Nations formulated the following two key issues which would have been considered in regard to the application submitted by Azerbaijan:

> "The territory of Azerbaijan having been originally part of the Empire of Russia, the question arises whether the declaration of the Republic in May 1918 and the recognition accorded by the Allied Powers in January 1920 suffice to constitute Azerbaijan de jure a 'full self-governing State' within the meaning of Article 1 of the Covenant of the League of Nations.
>
> Should the Assembly consider that the international status of Azerbaijan as a 'fully self-governing State' is established, the further question will arise whether the Delegation by whom the present application is made is held to have the necessary authority to represent the legitimate government of the country for the purpose of making the application, and whether that Government is in a position to undertake the obligations and give the guarantees involved by membership of the League of Nations."[26]

40. As to the first issue, the most important part of the mentioned Memorandum of the Secretary-General relates to the "Juristic observations", which reminds of the conditions governing the admission of new Members to the Organization contained in Article 1 of the Covenant of the League of Nations,[27] including the requirement to be a fully self-governing state. It is obvious that the state, a considerable part of the territory of which was occupied by the time of consideration of its application in the League of Nations, and yet the Government that submitted this application was overthrown, could not be regarded as fully self-governing in terms of Article 1 of the Covenant of the League of Nations.

41. In addressing the second issue, the Secretary-General of the League of Nations pointed out in his Memorandum that the mandate of the Azerbaijani delegation attending the Paris Peace Conference derived from the government that had been in power at Baku until April 1920. Thus, attention in the Memorandum is distinctly paid to the fact that at the time of submission by the Azerbaijani delegation of the application (1 November 1920) and the publication date of the Memorandum (24 November 1920) the government of the Democratic Republic of Azerbaijan, which issued the credentials to the delegation, was not actually in power since April 1920. It was further noted in the Memorandum that this Government did not exercise authority over the whole territory of the country.

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[26] League of Nations, *Memorandum by the Secretary-General on the Application for the Admission of the Republic of Azerbaijan to the League of Nations*, Assembly Document 20/48/108.

[27] See also *The Covenant of the League of Nations* (1919), in Malcolm D. Evans (ed.), *Blackstone's International Law Documents* (Oxford: Oxford University Press, 6th ed., 2003), pp. 1-7, at p. 1, Article 1.

42. Therefore, the Fifth Committee of the Assembly of the League of Nations in its resolution on the application of Azerbaijan decided that "it is not desirable, in the present circumstances, that Azerbaijan should be admitted to the League of Nations". It is clear from the text of the said resolution that under "the present circumstances" the Fifth Committee, which made no reference to Nagorny Karabakh at all, understood only that "Azerbaijan does not seem to possess a stable government with jurisdiction over a clearly defined territory".[28] Thus, these were just those reasons, derived from the requirements set forth in Article 1 of the Covenant of the League of Nations, which had prevented Azerbaijan from being admitted to the Organization.

43. The aforementioned documents of the League of Nations prove that the Armenian side is mistaken, to say the least of it, believing that the League of Nations "recognized the disputed status of Nagorny Karabakh"[29] and "refused to recognize Azerbaijan because of its claims over the Armenian-populated territories in Eastern Transcaucasia, namely Nagorno-Karabakh".[30]

44. At the same time, the League of Nations did not consider Armenia itself as a state and proceeded from the fact that this entity had no clear and recognized borders, neither status nor constitution, and its government was unstable. As a result, the admission of Armenia to the League of Nations was voted down on 16 December 1920.[31]

III. Expansion of the territory of Armenia and change of the demographic composition of its population in the Soviet period

45. The facts illustrate that over the 70 years of Soviet rule Armenia succeeded in expanding its territory at the expense of Azerbaijan and using every possible means to expel the Azerbaijanis from their lands. During this period, the aforementioned policy was implemented systematically and methodically.

46. As for the territory of Armenia, according to Armenian scholars, on the basis of the Treaty of Batoum signed by Turkey with Azerbaijan, Georgia, and Armenia on 4 June 1918, the territory of the first Armenian state in the South Caucasus established on 28 May 1918 — with the capital, which was conceded by Azerbaijan

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[28] League of Nations. Fifth Committee. *Admission of New Members. Resolution on the request for admission made by Azerbaijan*. Assembly Document 127.

[29] A/63/781-S/2009/156, p. 8, para. 26.

[30] See, e.g., the statement on behalf of Vartan Oskanian, Minister of Foreign Affairs of Armenia, at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, 31 August-7 September 2001, www.un.org/WCAR/statements/armeniaE.htm; the initial report of Armenia under the International Covenant of Economic, Social and Cultural Rights, E/1990/5/Add.36, 9 December 1998, p. 3, paras. 3 and 17 (a).

[31] League of Nations. Annex 30 B. *Future status of Armenia. Memorandum agreed to by the Council of the League of Nations*, meeting in Paris on 11 April 1920. League of Nations Document 20/41/9, p. 27; see also *Admission of new Members to the League of Nations. Armenia*. Assembly Document 209, pp. 2-3; Assembly Document 251.

on 29 May 1918[32] — formed a minimum of 8,000,[33] 9,000[34] and a maximum of 10,000 sq. km[35] in the western part of present-day Armenia. During the existence of this Armenian state from 1918-1920, it failed to expand its territories at the expense of neighbours.

47. On 30 November 1920, after the occupation of the Democratic Republic of Azerbaijan by Bolshevik Russia, with the aim of sovietization of Armenia, the western part of Zangazur uyezd was included in Armenia. As a result, the Nakhchyvan region was cut off from the main body of Azerbaijan.

48. From 12 March 1922 to 5 December 1936 Azerbaijan, Georgia and Armenia formed the Transcaucasian Soviet Federative Socialist Republics (hereinafter TSFSR). Until the admission of Azerbaijan into the TSFSR, the Basarkechar region of New-Bayazid uyezd, together with two thirds of Sharur-Daralayaz uyezd, had already been included in Armenia. After the admission of Azerbaijan into the TSFSR a considerable portion of Gazakh uyezd, a number of villages from Jabrayil uyezd and from the Autonomous Soviet Socialist Republic of Nakhchyvan were included in Armenia.

49. Thus, due to "sovietization," the territory of Armenia increased from 8,000-10,000 sq. km to 29,800 sq. km, mostly at the expense of Azerbaijani lands.

50. During the Soviet period the immigration of a great number of Armenians from abroad and expulsion of Azerbaijanis from their lands took place. Thus, as per Armenian sources, about more than 42,000 Armenians arrived in Armenia between 1921 and 1936.[36] The next step towards the artificial change of the demographic composition of the population in Armenia was a decree by J. Stalin in November 1945 on the immigration of foreign Armenians, according to which Armenia received more than 50,000 immigrants in 1946, 35,400 in 1947, and about 10,000 in 1948.[37]

51. On the pretext of resettling the Armenians coming from abroad, the Council of Ministers of the USSR adopted on 23 December 1947 and 10 March 1948 special decisions on the resettlement of collective farm workers and the other parts of the Azerbaijani population from the Armenian SSR to the Kur-Araz lowlands in the Azerbaijan SSR. Under these decisions, during the period between 1948 and 1953 more than 150,000 Azerbaijanis were forcibly resettled from their historical homelands — the mountainous regions of Armenia — to the then waterless steppes of Mughan and the Mil plateau. At the same time, by mid 1961, 200,000 Armenians

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[32] See, e.g., *State Archive of Political Parties and Social Movements of the Republic of Azerbaijan*, f. 970, inv. 1, f. 1, p. 51.

[33] See, e.g., G. Galoyan, *Struggle for the Soviet rule in Armenia* (Moscow: State Publishing House of Political Literature, 1957), p. 92.

[34] See, e.g., S. P. Agayan, *Great October and struggle of labours in Armenia for the victory of the Soviet rule* (Yerevan: Publishing House of the Academy of Sciences of the Armenian SSR, 1962), p. 174; E. C. Sarcissian, *Expansionary policy of the Ottoman Empire in Transcaucasia on the eve and in the years of the First World War* (Yerevan: Publishing House of the Academy of Sciences of the Armenian SSR, 1962), p. 365.

[35] See, e.g., *History of the Armenian people*, p. 283.

[36] Ibid., p. 336.

[37] Ibid., p. 366.

immigrated to Armenia[38] and between 1962 and 1973 the number of immigrants consisted of 26,100 people.[39]

52. Shortly after the assertion of claims on Nagorny Karabakh at the end of 1980s, the remaining 200,000 Azerbaijanis were forcibly deported from Armenia.

IV. The Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR

53. As the Armenian side insists, "[o]n 30 November 1920, the Soviet Government of Azerbaijan adopted a Declaration on recognition of Nagorny Karabakh as an integral part of Soviet Armenia as a welcome act towards the victory of Soviet forces in the country", while "[o]n 21 June 1921, the Government of Soviet Armenia, based on Azerbaijan's Declaration and the agreement with the Azerbaijani Government, issued a Decree recognizing Nagorny Karabakh as an integral part of Soviet Armenia". The Armenian side further claims that "[t]hese documents were registered in the League of Nations resolution of 18 December 1920, and in the 1920/21 annual report of the Ministry of Foreign Affairs of Russia, respectively".[40] In this regard, the following observations need to be made.

54. After the occupation of the Democratic Republic of Azerbaijan on 28 April 1920 by Bolshevik Russia, on 19 June 1920, S. Orjonikidze, head of the Caucasian Bureau of the Central Committee of the Russian Communist (*Bolshevik*) Party sent a telegram to G. Chicherin, People's Foreign Affairs Commissioner of Russian Soviet Federative Socialist Republic, stating that Soviet rule is declared in Karabakh and Zangazur and they "consider themselves to be part of the Soviet Republic of Azerbaijan".[41]

55. The Azerbaijan SSR covered the following areas as described in the document dated 5 August 1920 from the Central State Archive of the Red Army:

> "The territory of Azerbaijan covers the whole of Ganja province and all uyezds of Surmali, Nakhchyvan and Sharur-Daralayaz of the Erivan province, as well as the southern part of Erivan province with villages of Kamarli, Boyuk-Vedi and Davali and the eastern part of Novo Bayazet".[42]

56. Dashnak Armenia, the independence of which, due to the growing threat from the Bolsheviks, was de facto recognized by the League of Nations on 19 January 1920,[43] i.e. 7 days following the de facto recognition of Azerbaijan and Georgia by the League of Nations, i.e. on 12 January,[44] was shortly replaced by "Soviet" Armenia in the winter of 1920-1921.

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[38] *Documents of Foreign Policy of the USSR* (Moscow: State Publishing House of Political Literature, 1962), volume 6, note 33, p. 611.

[39] *History of the Armenian people*, p. 418.

[40] A/63/781-S/2009/156, p. 8, paras. 27-29.

[41] *State Archive of Political Parties and Social Movements of the Republic of Azerbaijan*, f. 609, in. 1, f. 21, p. 100.

[42] *Central State Archive of Red Army*, f. 195, in. 4, f. 385, p. 53.

[43] *Papers relating to the foreign relations of the United States, Paris Peace Conference*, 1919, volume IX (Washington, D. C.: U. S. Government Printing Office, 1946), pp. 899 and 901.

[44] Ibid., p. 904.

57. On 1 December 1920, N. Narimanov, Chairman of the People's Commissioners' Soviet of the Soviet Socialist Republic of Azerbaijan, guided by the decision of the Central Committee of the Communist Party of Azerbaijan of 30 November 1920, made a declaration on the occasion of the proclamation of Soviet rule in Armenia. In this declaration, the western part of Zangazur uyezd was conceded to Armenia and "the working peasants of Nagorny Karabakh are given the full right to self-determination".[45] As is seen, contrary to the understanding of the Armenian side, the declaration made no reference at all to the "recognition of Nagorny Karabakh as an integral part of Soviet Armenia".

58. On 2 December 1920, the agreement was signed between Russia and Armenia, according to Article 3 of which Russia recognized the following territories to be an undisputed part of the Soviet Socialist Republic of Armenia: "Erivan province [...] part of Kars province [...] Zangazur province [...] and part of Gazakh uyezd [...] and those parts of Tiflis province, which were in the possession of Armenia until 23 October 1920".[46] This document testifies that until 2 December 1920 not only Nagorny Karabakh, but also the whole Karabakh, except half of the Zangazur uyezd, were not part of Armenia. It also proves that the declaration by N. Narimanov of 1 December 1920 did not mean concession of Nagorny Karabakh to Armenia.

59. Moreover, the Armenian side distorts the text of a decree by Soviet Armenia dated 21 June 1921, presenting it as "a Decree recognizing Nagorny Karabakh as an integral part of Soviet Armenia".[47] In reality, according to this document, "on the basis of a declaration by the Revolutionary Committee of the Azerbaijan SSR [dated 1 December 1920] and agreement between the governments of the Soviet Republics of Armenia and Azerbaijan, the Revolutionary Committee of Soviet Armenia declares that from this day on Nagorny Karabakh is an inseparable part of the Soviet Republic of Armenia".[48] In other words, the decree confirms that until June 1921 Nagorny Karabakh could not have been a part of Armenia.

60. As far as the purported "agreement between the governments of Soviet Republics of Armenia and Azerbaijan" is concerned, it is important to notice that on 19 June 1921 the Presidium of the Central Executive Committee of Azerbaijan held its meeting and discussed, inter alia, "the report of Comrade Narimanov about his visit to Tiflis on the issue of external borders between the Soviet Republics of Azerbaijan, Georgia and Armenia". This report states in the most unambiguous manner that "Nagorny Karabakh remains an inseparable part of Soviet Azerbaijan with the right of internal self-rule". Following the discussion, the meeting decided "to approve the activities of the Commission on the establishment of external borders between the Azerbaijan SSR and the neighbouring Soviet Republics of Transcaucasia".[49]

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[45] *Communist* (Baku), 2 December 1920, p. 1.

[46] *International policy of the newest time in treaties, notes and declarations*, Part 3 (from raising blockade from Soviet Russia to the decade of the October Revolution), Issue 1 (Acts of Soviet diplomacy) (Moscow: Publication of Littzdat of the People Commissariat of Foreign Affairs, 1928), doc. 41, p. 75; *Great October Socialist Revolution and victory of the Soviet rule in Armenia* (Collection of documents) (Yerevan: Aypetrat, 1957), doc. 295, pp. 441-442.

[47] A/63/781-S/2009/156, p. 8, para. 28.

[48] *Khorurdain Ayastan*, 19 June 1921, p. 1.

[49] *State Archive of the Republic of Azerbaijan*, f. 379, inv. 1, f. 7480, p. 10.

61. The Armenian position is discredited also by a number of additional inconsistencies. Thus, the natural question arises as to why Soviet Armenia recognized Nagorny Karabakh as its integral part only in June 1921 if Soviet Azerbaijan had allegedly given its consent to that as early as 1 December 1920.

62. Furthermore, another Armenian official source (information entitled "Legal aspects for the right to self-determination in the case of Nagorny Karabakh" circulated at the request of the Permanent Mission of Armenia to the United Nations Office at Geneva) addresses the chronology of events at that time differently and thereby redoubles the curiousness of the position of Armenia. Thus, the document provides that "[a]ccording to this declaration [of 30 November], the borders previously accepted between Armenia and Azerbaijan were abrogated and Nagorny Karabakh, Zangezour and Nakhichevan were recognized as an integral part of Soviet Armenia". The document further states that "the Azerbaijani Revcom in its 'Declaration Regarding the Establishment of Soviet Power in Armenia' of December 2, 1920, recognized ... Nagorny Karabakh's right for self-determination", and "[o]n June 12, 1921, the National Council of the Azerbaijan SSR ... adopted a declaration, which proclaimed Nagorny Karabakh as an integral part of Armenian SSR". According to the document, "[o]n June 19, 1921, Alexander Miasnikyan, Chairman of the Council of People's Commissars of Armenia, issued the following decree: 'On the basis of the declaration of the Revolutionary Committee of the Soviet Socialist Republic of Azerbaijan, and the agreement between Socialist Republics of Armenia and Azerbaijan, it is declared, that from now on Nagorny Karabakh is an inseparable part of Soviet Socialist Armenia'".[50]

63. The impression from this chronological overview is that Azerbaijan was surprisingly persistent in its purported desire to get rid of its territories and attempts to persuade Armenia to accept this gift. The absurdity of such proposition logically derives from the aforementioned information provided by the Armenian side, according to which Azerbaijan allegedly declared no less than three times, i.e. on 30 November 1920, 2 December 1920 and 12 June 1921, that it recognized Nagorny Karabakh as an integral part of Armenia, while Armenia agreed with that only in June 1921. It is notable, by the way, that the two aforementioned documents circulated by Armenia in the United Nations contradict one another as to the date of this purported consent (19 June 1920 in document E/CN.4/2005/G/23 and 21 June 1920 in document A/63/781-S/2009/156).

64. Furthermore, in the view of the Armenian side, "[f]ollowing the collapse of the [Russian] Empire, Nagorny Karabakh (with 95 per cent of Armenian population) refused to subject itself to the authority of the Democratic Republic of Azerbaijan",[51] "[f]rom 1918 to 1920 ... possessed all necessary attributes of statehood, including army and legitimate authorities" and was "an independent legal entity"[52] or "independent political unit",[53] while "[o]n 23 April 1920 the Ninth Assembly of the Karabakh Armenians declared Nagorny Karabakh as an inalienable part of the Republic of Armenia".[54] At the same time, according to the Armenian side, following the declaration allegedly made by Azerbaijan on 30 November 1920,

[50] E/CN.4/2005/G/23, pp. 3-4.
[51] A/63/781-S/2009/156, p. 7, para. 21.
[52] Ibid., p. 7, para. 23.
[53] E/CN.4/2005/G/23, p. 2.
[54] A/63/781-S/2009/156, p. 7, para. 24.

"the borders previously accepted between Armenia and Azerbaijan were abrogated and Nagorny Karabakh, Zangezour and Nakhichevan were recognized as an integral part of Soviet Armenia".[55] In other words, as per contradicting arguments of the Armenian side, on the one hand, Nagorny Karabakh is considered to be "an independent legal entity" or "an independent political unit" from 1918 to 1920 and likely as part of Armenia since 23 April 1920, while, on the other, there were "borders previously accepted between Armenia and Azerbaijan" and Nagorny Karabakh, Zangazur and Nakhchyvan formed an integral part of Azerbaijan.

65. It is natural enough that, while falsifying facts, Armenia reaches a deadlock. Otherwise, it would present credible arguments, especially as far as the alleged declarations of Azerbaijan are concerned. The Armenian side at the same time states that "[n]eglecting the reality, on 5 July the Caucasian Bureau of the Communist Party, acting under Joseph Stalin's personal pressure, revised its own decision of the previous day and resolved to subject Karabakh to Azerbaijani rule and to create an autonomous province (oblast) of Nagorny Karabakh, within the territory of Soviet Azerbaijan".[56] The Armenian side also acknowledges that "[i]n July 1921, the Azerbaijan SSR insisted that Nagorny Karabakh's issue be considered at the Plenary Session of the Caucasian Bureau of the Central Committee of the Russian Communist Party-Bolshevics (RCP-B)".[57] The question arises as to why it was necessary to consider the issue of Nagorny Karabakh on 4 July 1921, revise the decision of the previous day on 5 July 1921 and "subject Karabakh to Azerbaijani rule" if Nagorny Karabakh, as the Armenian side insists, was already a part of Armenia. The Armenian side passes over in silence how it could happen against the background of the purported three declarations of Azerbaijan, especially less than a month after the latest one of 12 June 1921.

66. In reality, the Azerbaijani leadership at that time was consistent in retaining Nagorny Karabakh within Azerbaijan. All its declarations do not leave any doubt that there could be no agreement between the Soviet Socialist Republics of Azerbaijan and Armenia on the inclusion of Nagorny Karabakh in Armenia. On the other hand, the purpose of those declarations on Nagorny Karabakh published in Armenia was the pacification of Dashnak rebellions, with the liquidation of which in Zangazur, on 15 July 1921, the "Soviet" rule was again established in Armenia.

67. It was with the same purpose of more effective pacification of Dashnaks that the Bolsheviks chose the method of indulging Armenian nationalists and the Nagorny Karabakh issue was raised in the Caucasian Bureau of the Central Committee of the Russian Communist (*Bolsheviks*) Party on 4 July 1921 and 4 items were put forward for discussion:

(a) To retain Karabakh as part of Azerbaijan;

(b) To hold a referendum with the participation of all the Armenian and Muslim population in the whole of Karabakh;

(c) To include the mountainous part of Karabakh in Armenia;

(d) To hold a referendum only in Nagorny Karabakh, i.e. among the Armenians.

[55] E/CN.4/2005/G/23, p. 3.
[56] A/63/781-S/2009/156, p. 8, para. 30.
[57] E/CN.4/2005/G/23, p. 4.

68. The Caucasian Bureau decided that "Nagorny Karabakh shall be included in the Soviet Socialist Republic of Armenia" and "the referendum shall be held only in Nagorny Karabakh, i.e. among the Armenians". However, according to the same decision, "[s]ince the Karabakh issue gave rise to serious controversies the Caucasian Bureau of the CCRCP deems it necessary to submit it for the final decision of the CCRCP".[58]

69. The next day, on 5 July 1921, the Caucasian Bureau discussed "the reconsideration of the decision taken on Karabakh at the previous plenary" and decided to retain Nagorny Karabakh within the Azerbaijan SSR. The following quotation proves that the Bureau decided to leave Nagorny Karabakh within the Azerbaijan SSR, not to "transfer" or "subject" it to Azerbaijani rule, as the Armenian side claims:[59]

> "Taking into account the necessity of national peace between the Muslims and the Armenians, the economic relations between upper and lower Karabakh and the permanent relations of upper Karabakh with Azerbaijan, Nagorny Karabakh shall be retained within the Azerbaijan SSR and broad autonomy shall be given to Nagorny Karabakh with Shusha city as an administrative centre".[60]

70. In this regard, attention should be drawn to the contradictory position of the Government of Armenia as to the status of the Caucasian Bureau. Thus, according to the document circulated by the request of the Permanent Representative of Armenia to the United Nations on 24 March 2009, "the decision [taken by the Caucasian Bureau] cannot serve as a legal basis for the determination of the status and the borders of the Nagorny Karabakh" insofar as it was adopted by a third-country party, i.e. the Russian Bolshevik Party, with no legal power or jurisdiction".[61] Along with the same understanding, in the initial report of Armenia under the International Covenant on Economic, Social and Cultural Rights the Caucasian Bureau is referred to as "an unconstitutional and unauthorized party organ", which "had no right to participate on the national State-building activities of another State", while its decision of 5 July is considered as "an act of gross intervention in the internal affairs of another sovereign Soviet Republic".[62] On the contrary, as per the document circulated at the request of the Permanent Mission of Armenia to the United Nations Office at Geneva on 22 March 2005, the Caucasian Bureau is viewed as a legitimate body with the authorization to decide on territorial issues affecting Armenia and Azerbaijan at that time. Thus, Armenia is confident that "[d]e jure, only the [...] decision [of the Caucasian Bureau] of July 4, 1921 [to] 'include Nagorny Karabakh in the Armenian SSR, and to conduct plebiscite in

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[58] *Extract from the Protocol of the plenary session of the Caucasian Bureau of the Central Committee of the Russian Communist (Bolsheviks) Party* of 4 July 1921. For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials*, pp. 90-91.

[59] A/63/781-S/2009/156, pp. 8-9, paras. 30 and 34.

[60] *Extract from the Protocol of the plenary session of the Caucasian Bureau of the Central Committee of the Russian Communist (Bolsheviks) Party* of 5 July 1921. For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials*, p. 92.

[61] A/63/781-S/2009/156, p. 8, para. 30.

[62] E/1990/5/Add.36, p. 3, para. 2.

Nagorny Karabakh only' was the last legal document on the status of Nagorny Karabakh to be legally adopted without procedural violations".[63]

71. In reality, the decision of 5 July 1921 was the final and binding ruling which would be repeatedly affirmed by the Soviet leadership and recognized by Armenia over the years. Despite the fact that Nagorny Karabakh was retained within Azerbaijan, it was given the status of autonomy, though the more than half-a-million strong Azerbaijani community compactly residing in Armenia at that time was refused the same privilege.

72. On 7 July 1923, the Central Executive Committee of the Azerbaijan SSR issued a Decree "On the Formation of the Nagorny Karabakh Autonomous Oblast".[64] The town of Khankandi was defined as the administrative centre of the autonomy. In September 1923, the name of the town was changed to Stepanakert after Stepan Shaumian, a dashnak and a "bolshevik" leader.

73. The administrative borders of the NKAO were defined in a way to ensure that the Armenian population constituted a majority. According to the population census of 12 January 1989, the population of the autonomous oblast was around 189,000 persons; of them: around 139,000 Armenians — 73.5 percent, around 48,000 Azerbaijanis — 25.3 per cent, and around 2,000 representatives of other nationalities — 1.2 per cent.[65]

74. The allegations of discrimination against the Armenian population of Nagorny Karabakh[66] do not stand up to scrutiny. In reality, the NKAO possessed all essential elements of self-government.

75. The status of Nagorny Karabakh as an autonomous oblast within the Azerbaijan SSR was stipulated in the USSR Constitutions of 1936 and 1977.[67] In accordance with the Constitutions of the USSR and the Azerbaijan SSR, the legal status of the NKAO was governed by the Law "On the Nagorny Karabakh Autonomous Oblast", which was adopted by the Supreme Soviet of the Azerbaijan SSR on 16 June 1981.[68] Under the Constitution of the USSR, the NKAO was represented by five deputies in the Council of Nationalities of the Supreme Soviet of the USSR. It was represented by 12 deputies in the Supreme Soviet of the Azerbaijan SSR.

76. The Soviet of People's Deputies of the NKAO — the government authority in the oblast — had a wide range of powers. It decided all local issues based on the interests of citizens living in the oblast and with reference to its national and other specific features. Armenian was used in the work of all government, administrative and judicial bodies and the Prosecutor's Office, as well as in education, reflecting the language requirements of the Armenian population of the oblast. Local TV and

[63] E/CN.4/2005/G/23, p. 4.

[64] For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials*, pp. 152-153.

[65] *National composition of the population of the USSR. According to the findings of the All-Union population census of 1989* (Moscow: Finance and Statistics, 1991), p. 120.

[66] A/63/781-S/2009/156, p. 9, paras. 32-33.

[67] USSR Constitution (Moscow, 1936), p. 14, article 24; USSR Constitution (Moscow, 1977), pp. 13-14, article 87.

[68] Law of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Oblast", 16 June 1981 (Baku: Azerneshr, 1987), p. 3, article 3.

radio broadcasts and the publication of newspapers and magazines in the Armenian language were all guaranteed in the NKAO.

77. As a national territorial unit, the NKAO enjoyed administrative autonomy, and, accordingly, had a number of rights, which, in practice, ensured that its population's specific needs were met. In fact, statistics illustrate that the NKAO was developing more rapidly than Azerbaijan as a whole. The existence and development of the NKAO within Azerbaijan confirms that the form of autonomy that had evolved fully reflected the specific economic, social, cultural and national characteristics of the population and the way of life in the autonomous oblast.

78. Against this background, Armenia should not overlook the fact that, unlike itself, which has purged its territory of all non-Armenians and become a uniquely [illegible] ethnic state, Azerbaijan has preserved its ethnic diversity to the present day. Instead of accusing Azerbaijan of "discrimination towards Nagorny Karabakh", it is for the Government of Armenia to exercise some degree of self-evaluation in the field of human rights. Thus, the relevant United Nations bodies have repeatedly expressed their concerns about the spirit of intolerance prevailing in Armenia and the discriminatory policies and practices pursued in that country against ethnic and religious minorities, refugees and asylum-seekers, women and children.[69]

79. In this regard, it would be appropriate to refer to the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (June 2008), which make it clear that "[s]hould States demonstrate greater interest in minorities abroad than at home or actively support a particular minority in one country while neglecting it elsewhere, the motives and credibility of their actions may be put into question".

80. Thus, the illustrative evidence of racial prejudices prevailing in the policy and practice of Armenia is the unconcealed conviction in "ethnic incompatibility" between Armenians and Azerbaijanis. This word combination has been first used in a speech at the Diplomatic Academy in Moscow in 2003 by the then President Robert Kocharian of Armenia.[70] The discriminatory conduct of Armenia towards Azerbaijanis, especially the aforementioned statement of President Kocharian, has produced indignation within the international community. Thus, the then Secretary-General of the Council of Europe Walter Schwimmer said "Kocharian's comment was tantamount to warmongering" and manifestation of "bellicose and hate rhetoric", while the then President of the Parliamentary Assembly of the Council of Europe Peter Schieder stated that "since its creation the Council of Europe has never heard the phrase 'ethnic incompatibility'".[71]

V. The rising of the contemporary phase of the conflict

81. While presenting its own interpretation of the chronology of events at that time, the Armenian side usually passes over in silence a number of important factual

[69] See, e.g., A/57/18, paras. 277, 278, 280, 282 and 283; CRC/C/15/Add.119, paras. 24, 32, 46 and 48; CCPR/C/79/Add.100, paras. 14, 15, 16 and 17; and E/C.12/1/Add.39, para. 10.

[70] Press article by Artur Terian published on 16 January 2003, http://www.armenialiberty.org/armeniareport/report/en/2003/01/4B1EBB47-69C0-40AF-83DB-24E810DA88E4.aspSeeRFE/RL.

[71] *Council of Europe criticizes Armenian President*, RFE/RL Newsline, 17 January 2003, http://www.rferl.org/content/article/1142847.html.

aspects pertaining to the real situation on the ground. Another illustration of such "forgetfulness" is the memorandum entitled "Nagorny Karabakh: peaceful negotiations and Azerbaijan's militaristic policy" circulated by the request of the Permanent Representative of Armenia to the United Nations as document A/63/781-S/2009/156.

82. Thus, the present-day stage of the Armenian-Azerbaijani conflict began at the end of 1987[72] with the attacks on the Azerbaijanis in Khankandi (during the Soviet period — Stepanakert) and Armenia resulting in a flood of Azerbaijani refugees and internally displaced persons.

83. On 20 February 1988, the representatives of the Armenian community at the session of the Soviet of People's Deputies of the NKAO adopted a resolution seeking the transfer of the NKAO from the Azerbaijan SSR to the Armenian SSR.[73]

84. On 22 February 1988, near the settlement of Asgaran on the Khankandi-Aghdam highway, the Armenians opened fire on a peaceful demonstration by the Azerbaijanis protesting against the above-mentioned decision of the Soviet of People's Deputies of the NKAO. Two Azerbaijani youths lost their lives in consequence, becoming the first victims of the conflict.

85. On 26-28 February 1988, 26 Armenians and Azerbaijanis were killed as a result of the disturbances in Sumgait. It is notable that one of the leading figures in these events was a certain Edward Grigorian, an Armenian and native of Sumgait, who was directly involved in the killings and violence against the Armenians and the pogroms in the Armenian neighbourhoods. By decision of the Criminal Division of the Supreme Court of the Azerbaijan SSR dated 22 December 1989, Grigorian was sentenced to 12 years' imprisonment. The Court found Grigorian to be one of the organizers of unrest and massacres. Depositions by witnesses and victims show that he had a list of flats inhabited by the Armenians and, together with three other Armenians, called for reprisals against the Armenians, in which he took part personally. His victims (all Armenians) identified Grigorian as one of the organizers and active figures in the violence. In fact, events in Sumgait, being necessary to the Armenian leadership as a means of launching an extensive anti-Azerbaijani campaign and justifying the ensuing aggressive actions against Azerbaijan, had been planned and prepared in advance. The events in Sumgait also could hardly be managed without outside powerful support. As *The Times* wrote, the KGB leadership tried "to weaken the Kremlin's authority and powerbase" and "organised acts of provocation, using genuine local dissatisfaction as a base, in cities across the Soviet Union, including Sumgait and Baku ...".[74]

86. Following the aforementioned petition of 20 February 1988, a number of other declarations and decisions were taken by both the Armenian SSR and the local

[72] According to Thomas de Waal, as early as in February 1986 one activist of the separatist movement, Muradian, travelled to Moscow from Yerevan "with a draft letter that he persuaded nine respected Soviet Armenian Communist Party members and scientists to sign" with the purpose of separation of Nagorny Karabakh from Azerbaijan and its annexation to Armenia. *Black Garden: Armenia and Azerbaijan through Peace and War* (New York University Press, New York and London, 2003), pp. 17-20.

[73] A/63/781-S/2009/156, pp. 9-10, para. 36.

[74] *Vladimir Kryuchkov, Hardline Soviet Communist who became head of the KGB and led a failed plot to overthrow Mikhail Gorbachev, Times Online*, 30 November 2007, http://www.timesonline.co.uk/tol/comment/obituaries/article2970324.ece.

Armenians of the NKAO with the view of securing the unilateral secession of Nagorny Karabakh from Azerbaijan.[75]

87. Armenia's view is that "following the collapse of the USSR, on the territory of the former Azerbaijani SSR two States were formed: the Republic of Azerbaijan and the Republic of Nagorny Karabakh" (hereinafter — "NKR") and that "[t]he establishment of both States has similar legal basis", while the process by which the latter entity became "independent" reflected the right of self-determination.[76]

88. However, this approach is fundamentally flawed. On the eve of the independence of Azerbaijan, the unlawfulness within the Soviet legal system of attempted unilateral secession of Nagorny Karabakh without Azerbaijan's consent was confirmed at the highest constitutional level. Azerbaijan did not so consent, so that the definition of the territory of Azerbaijan as it proceeded to independence and in the light of the applicable law clearly included the territory of Nagorny Karabakh. Azerbaijan was entitled to come to independence within the territorial boundaries that it was recognized as having as the Azerbaijan SSR within the USSR.

89. The assertion of secession from an independent Azerbaijan on the grounds of self-determination contradicts the universally accepted norm of territorial integrity, as discussed in the report "On the Fundamental Norm of the Territorial Integrity of States and the Right to Self-Determination in the light of Armenia's Revisionist Claims" circulated by the request of Azerbaijan as a document of the General Assembly and the Security Council.[77]

90. Not only has Azerbaijan not consented to this secession (indeed it has constantly and continuously protested against it), but no state in the international community has recognized the "NKR" as independent, not even Armenia, even though Armenia provides indispensable economic, political and military sustenance without which that entity could not exist.

91. It follows from the aforementioned that Armenia's claims as to the "independence" of Nagorny Karabakh are contrary to and unsustainable in international law.

VI. Escalation of the conflict, its course and consequences

92. At the end of 1991 and the beginning of 1992 the conflict turned into a military phase. Taking advantage of the political instability as a result of the dissolution of the Soviet Union and internal squabbles in Azerbaijan, Armenia initiated with external military assistance combat operations in Nagorny Karabakh.

93. The first armed attack by the Republic of Armenia against the Republic of Azerbaijan after the independence of the two Republics — an attack in which organized military formations and armoured vehicles operated against Azerbaijani targets — occurred in February 1992, when the town of Khojaly in the Republic of Azerbaijan was notoriously overrun and its population was subjected to an unprecedented massacre. This bloody tragedy, which became known as the Khojaly genocide, involved the extermination or capture of thousands of Azerbaijanis; the

[75] For more information, see A/63/664-S/2008/823, p. 45, para. 152.
[76] A/63/781-S/2009/156, p. 11, para. 43.
[77] A/63/664-S/2008/823.

town was razed to the ground. Over the night from 25 to 26 February 1992 the Armenian armed forces with the help of the infantry guards regiment No. 366 of the former USSR, the personnel of which was composed mainly of Armenians, implemented the seizure of Khojaly. The inhabitants of Khojaly that remained in the town before the tragic night tried to leave their houses after the beginning of the assault in the hope to find the way to the nearest place populated by the Azerbaijanis. But these plans have failed. Invaders destroyed Khojaly and with particular brutality implemented carnage over its peaceful population. As a result, 613 civilians were killed, including 106 women, 63 children and 70 elderly. Another 1,000 people were wounded and 1,275 taken hostage. To this day, 150 people from Khojaly remain missing.

94. As news and accounts of the atrocity surfaced, the level of brutality was revealed: atrocities by Armenian troops included scalping, beheading, bayoneting of pregnant women, and mutilation of bodies. Even children were not spared. The facts confirm that the intentional slaughter of the Khojaly town civilians on 25-26 February 1992 was directed to their mass extermination only because they were Azerbaijanis. The Khojaly town was chosen as a stage for further occupation and ethnic cleansing of Azerbaijani territories, striking terror into the hearts of people and creating panic and fear before the horrifying massacre.

95. In May 1992, Shusha, the Azerbaijani-populated administrative centre of the district within Nagorny Karabakh, and Lachyn, the district situated between Armenia and Nagorny Karabakh, were occupied. In 1993, the armed forces of Armenia captured another six districts of Azerbaijan around Nagorny Karabakh: Kalbajar (April 1993), Aghdam (July 1993), Jabrayil (August 1993), Gubadly (August 1993), Fuzuli (August 1993) and Zangilan (October 1993).

96. After the open assertion by Armenia in the late 1980s of its territorial claims on Azerbaijan and the launching of armed operations in the Nagorny Karabakh region of the Republic of Azerbaijan such well-known terrorist organizations as the Armenian Secret Army for the Liberation of Armenia (ASALA), the Commandos of Justice of the Armenian Genocide, and the Armenian Revolutionary Army, transferred the centre of their activities from the countries of the Middle East, Western Europe and North America to the territory of the former USSR.

97. In all, as a result of terrorist acts against Azerbaijan carried out since the late 1980s by the Armenian secret service and some Armenian organizations closely connected with it, including criminal acts against road, rail, sea and air transport and ground communications, over 2,000 citizens of Azerbaijan have been killed, the majority of them women, the elderly and children.[78]

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[78] For more information, see the *Information provided by the Ministry of Foreign Affairs of Azerbaijan on the organization and implementation by Armenia of terrorist activities against Azerbaijan*, annex to the letter dated 13 November 1995 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, A/C.6/50/4, 15 November 1995; *Information provided by the Ministry of Foreign Affairs of Azerbaijan on measures to eliminate international terrorism*, annex to the note verbale dated 8 November 1996 from the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, A/C.6/51/5, 8 November 1996.

98. Furthermore, there are unquestionable facts testifying about the active use by Armenia of mercenaries to attack Azerbaijan.[79]

99. In sum, the ongoing armed conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan has resulted in the occupation of almost one fifth of the territory of Azerbaijan and made approximately one out of every eight persons in the country an internally displaced person or refugee, 20,000 people were killed, 50,000 people were wounded or became invalids, about 5,000 citizens of Azerbaijan are still missing. It should be particularly emphasized that the Azerbaijani refugees and internally displaced persons were forced to flee because Armenia and its military forces had the clear aim of ethnic cleansing and of creating a mono-ethnic culture there.

100. On 12 May 1994, the ceasefire was established. However, Armenia continues to violate the truce. Since summer of 2003 there has been an acute increase in the Armenian side's violations of the ceasefire. In addition to shelling and killing Azerbaijani soldiers along the ceasefire line, Armenians also attack civilians residing in the adjacent territories.

101. The aggression against the Republic of Azerbaijan has severely damaged the socio-economic sphere of the country. In the occupied territories 6 cities, 12 town-type villages, 830 settlements, and hundreds of hospitals and medical facilities were burned or otherwise destroyed. As a result of aggression, hundreds of thousands of houses and apartments and thousands of community and medical buildings were destroyed or looted. Hundreds of libraries have been plundered and millions of books and valuable manuscripts have been burned or otherwise destroyed. Several state theatres, hundreds of clubs and dozens of musical schools have been destroyed. Several thousands of manufacturing, agricultural and other kinds of factories and plants have been pillaged. The hundred kilometres-long irrigation system has been totally destroyed. Flocks of several hundreds of thousands of sheep and dozens of thousands of cattle have been driven out of the occupied territories to Armenia. About 70 per cent of the summer pastures of Azerbaijan remains in the occupied zone.

102. The regional infrastructure including hundreds of bridges, hundreds of kilometres of roads and thousands of kilometres of water pipelines, as well as thousands of kilometres of gas pipelines and dozens of gas distribution stations have been destroyed.

103. The war against Azerbaijan has also had catastrophic consequences for its cultural heritage both in the occupied territories and in Armenia.[80]

104. Contrary to the numerous statements of the official Yerevan that Armenia is not directly involved in the conflict with Azerbaijan and occupation of its territories and that "Nagorny Karabakh gained its independence according to the domestic and international legal norms" (document A/63/781-S/2009/156 is yet another example of such misinterpretation), there are ample evidences testifying against such allegations and proving the direct military aggression of the Republic of Armenia

[79] For more information, see the note by the Secretary-General entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", A/49/362, pp. 24-29, paras. 69-72.

[80] For more information, see the report entitled *The War against Azerbaijani Cultural Heritage*, A/62/691-S/2008/95, 13 February 2008.

against a sovereign state.[81] At the same time, "NKR" in its current manifestation is an ethnically constructed illegal entity and its organs must also be so tainted. The area of Nagorny Karabakh and the surrounding occupied territories remain under the effective control of Armenia.

105. In reality, the actions of Armenia, up to and including the resort to force, constitute a violation of the fundamental norm of respect for the territorial integrity of states, as well as a violation of other relevant international legal principles, such as the rule prohibiting the use of force.

VII. The current situation in the occupied territories of Azerbaijan

106. It has been internationally recognized that Azerbaijani territories are under occupation and that Armenia has been actively involved in the creation and maintenance of that situation. The existence of and exclusive Armenian presence in the occupied territories is expressly recognized by the political organs of the United Nations, by the European Union, OSCE, the Council of Europe and the Organization of the Islamic Conference, together with recognition by individual states. Accordingly, Armenia is an occupying power within the meaning of the relevant international legal provisions.

107. The critical period for the determination of the status of Armenia as an occupying power of Azerbaijani territory is the end of 1991 for this was the period during which the USSR disintegrated and the new successor States came into being, thus transforming an internal conflict between the two Union Republics into an international conflict.

108. Taking advantage of the favourable results of military actions, Armenia is trying to consolidate the current status quo and impose finally a fait accompli situation through measures aimed at preventing the expelled Azerbaijani population from returning to their places of origin. Such measures include, inter alia, continuing illegal settlement practices and economic activities in the occupied territories accompanied by serious and systematic interference with property rights.

109. Sources, including Armenian ones, report on tens of thousands of settlers, who have moved into the occupied territories of Azerbaijan, including districts adjacent to the Nagorny Karabakh region, such as Lachyn, Kalbajar, Zangilan and Jabrayil. Facts testify that this is being done in an organized manner with the purpose of annexation of these territories. In 2000, "the resettlement programme" has been adopted with the declared purpose to increase the number of the population in the Nagorny Karabakh region to 300,000 by the year 2010.

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[81] See, e.g., the report entitled *Military occupation of the territory of Azerbaijan: a legal appraisal*, annex to the letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, A/62/491-S/2007/615, 23 October 2007, pp. 5-8; A/63/662-S/2008/812, pp. 7-8, paras. 16-19; A/62/692-S/2007/51, pp. 6-10, paras. 17-33; *Report of the Secretary-General pursuant to the statement of the President of the Security Council in connection with the situation relating to Nagorny-Karabakh*, para. 10 (S/25600, 14 April 1993); OSCE Office for Democratic Institutions and Human Rights, *Republic of Armenia Presidential Election Observation*, final report, p. 8 (issued 9 April 1998); Crisis Group, *Nagorno-Karabakh: Viewing the Conflict from the Ground*, p. 9 (Europe report No. 166, 14 September 2005); Letter from the Chargé d'affaires of the Permanent Mission of Azerbaijan to the United Nations Secretary-General (with annexed photocopies), S/1994/147, 14 February 1994.

110. Armenia continues to take purposeful measures to build up its military presence in the occupied territories of Azerbaijan. The arms control mechanism is not effective in the territories of Azerbaijan occupied by Armenia. Accumulation of a great number of armaments and ammunitions in these territories, which are beyond international control, poses serious threats to regional peace and security.

111. Highly alarmed by the far-reaching implications of this activity, Azerbaijan has requested to address the situation in its occupied territories within the General Assembly. This initiative proceeded from the strong belief that the only way for reaching a just, complete and comprehensive settlement of the conflict between Armenia and Azerbaijan is an approach based on the full and unequivocal respect for the letter and spirit of international law.

112. On 29 October 2004, the General Assembly decided to include the item entitled "The situation in the occupied territories of Azerbaijan" on the agenda of its fifty-ninth session. On 11 November 2004, a report on the transfer of population into the occupied territories of Azerbaijan was submitted to the General Assembly.[82] The General Assembly's consideration of this agenda item played a crucial role in attracting attention to the issue of the illegal transfer of settlers into the occupied territories of Azerbaijan, as well as in initiating urgent measures for putting an end to this dangerous practice.

113. A visit to the occupied territories of the OSCE fact-finding mission from 30 January-5 February 2005 became a logical consequence of Azerbaijan's initiative to raise the issue on the situation in its occupied territories before the General Assembly. The main outcome of the mission's activity was the report based on comprehensive facts, both provided by Azerbaijan and obtained during study of the situation on the ground. The mission clearly confirmed the transfer of settlers into the occupied territories, thus underlining the concerns of Azerbaijan. In their turn, the OSCE Minsk Group Co-Chairmen, proceeding from the conclusions contained in the mission's report, have emphasized the inadmissibility of changes in the demographic composition of the region and urged appropriate international agencies to conduct needs assessment for resettlement of the population located in the occupied territories and return of the internally displaced persons to their places of permanent residence. The report and recommendations of the OSCE Minsk Group Co-Chairmen that were based on it, laid down a basis for further consideration and resolution of the problem.[83]

114. The issue of the situation in the occupied territories of Azerbaijan has been also included in the agenda of the subsequent sessions of the General Assembly.

115. On 7 September 2006, the General Assembly adopted resolution 60/285 entitled "The situation in the occupied territories of Azerbaijan" as proposed by Azerbaijan in regard to the incidents of massive fires taking place in the occupied territories.[84]

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[82] *Information on the transfer of population into the occupied territories of Azerbaijan*, annex to the letter dated 11 November 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the General Assembly, A/59/568, 11 November 2004.

[83] Letter dated 18 March 2005 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Annex II: *Report of the OSCE fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorny Karabakh*, A/59/747-S/2005/187, 21 March 2005.

[84] Letter dated 28 July 2006 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, transmitting a letter dated 28 July 2006 from the Minister for Foreign Affairs of the Republic of Azerbaijan regarding the wide-scale fires in the occupied territories of Azerbaijan, A/60/963.

116. The resolution stresses the necessity of the urgent conduct of an environmental operation, and calls for assessment of the short-term and long-term impact of the fires on the environment of the region and its rehabilitation. For these purposes, the resolution emphasizes the readiness of the parties to cooperate and calls upon the organizations and programmes of the United Nations system, in particular the United Nations Environment Programme to cooperate with OSCE.

117. The OSCE fact-finding mission, carried out from 2 to 13 October 2006, assessed the short-term and long-term impact of the fires on the environment in the affected territories and confirmed, inter alia, that "the fires resulted in environmental and economic damages and threatened human health and security".[85]

118. On 14 March 2008, the General Assembly adopted at its sixty-second session resolution 62/243 on the situation in the occupied territories of Azerbaijan. Seriously concerned that the armed conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan continued to endanger international peace and security, the General Assembly reaffirmed its continued strong support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders, demanding the immediate, complete and unconditional withdrawal of all Armenian forces from all occupied territories of the Republic of Azerbaijan. The Assembly reaffirmed the inalienable right of the population expelled from the occupied territories to return to their homes. It has also recognized the necessity of providing normal, secure, and equal conditions of life for Armenian and Azerbaijani communities in the Nagorny Karabakh region of the Republic of Azerbaijan, which would allow to build up an effective democratic system of self-governance in this region within the Republic of Azerbaijan. The General Assembly also reaffirmed that no state shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation.

119. By paragraph 8 of resolution 62/243, the General Assembly requested the Secretary-General to submit to the General Assembly at its sixty-third session a comprehensive report on the implementation of the resolution. This report was issued on 30 March 2009 and reproduced the replies received from Governments of States Members of the United Nations.[86]

VIII. Mediation efforts

120. Since February 1992 the process of mediation on the settlement of the Armenia-Azerbaijan conflict within the Conference on Security and Cooperation in Europe (hereinafter CSCE)[87] has continued. At the Additional Meeting of the CSCE Council of Ministers, held in Helsinki on 24 March 1992, a decision to convene as soon as possible a conference on Nagorny Karabakh in Minsk under the auspices of CSCE to provide an ongoing forum for negotiations towards a peaceful settlement

[85] Letter dated 20 December 2006 from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General. Annex: *OSCE-led environmental assessment mission to the fire-affected territories in and around the Nagorny Karabakh region. Report to the OSCE Chairman-in-Office from the Coordinator of OSCE Economic and Environmental Activities*, A/61/696.

[86] A/63/804 and Corr.1 and Add.1.

[87] Since 1 January 1995 the CSCE has been transformed into the Organization for Security and Cooperation in Europe.

of the crisis on the basis of the principles, commitments and provisions of CSCE was adopted.

121. In general, the legal and political constituents for the settlement of the conflict are based on the norms and principles of international law, laid down in Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) and General Assembly resolution 62/243, as well as in the appropriate documents and decisions of OSCE and other international organizations. The above-mentioned Security Council resolutions were adopted in 1993 in response to the occupation of the territories of Azerbaijan and reaffirmed respect for the sovereignty, territorial integrity and inviolability of the international borders of the Republic of Azerbaijan and all other states in the region. The resolutions demanded immediate cessation of all hostile acts, and immediate, complete and unconditional withdrawal of occupying forces from all occupied regions of the Republic of Azerbaijan, and called for the restoration of economic, transport and energy links in the region, ensuring the return of refugees and displaced persons to their homes. The Security Council approved also the efforts of the OSCE Minsk Group on the achievement of the peaceful solution to the conflict and called for the search of ways of conflict settlement within the OSCE Minsk process. None of these resolutions was implemented by Armenia.

122. On 12 May 1994, the ceasefire was established. According to the decision taken at the CSCE Budapest Summit (5-6 December 1994), Heads of States and Governments of the CSCE participating states set up the office of the Co-Chairmanship of the Minsk Conference for the coordination of all mediation efforts within the CSCE framework. The Budapest Summit tasked the CSCE Chairman-in-Office to conduct negotiations aimed at the conclusion of the political agreement on the cessation of the armed conflict, implementation of which would remove the consequences of the conflict and would allow convening the Minsk Conference. The Summit also adopted a decision on the deployment of the CSCE multinational peacekeeping forces after the achievement of the agreement between the Parties on the cessation of the armed conflict, and the establishment of the High-Level Planning Group located in Vienna and aimed at the preparation of the peacekeeping operation. It superseded an earlier Initial Operations Planning Group, which was established in May 1993.

123. The OSCE Chairman-in-Office issued on 23 March 1995 the mandate for the Co-Chairmen of the Minsk Process.[88]

124. At the OSCE Lisbon Summit of the Heads of States and Governments of the CSCE participating states, held on 2-3 December 1996, the Co-Chairmen of the OSCE Minsk Group and the OSCE Chairman-in-Office recommended the principles, which should have been the basis for the settlement of the Nagorny Karabakh conflict. Armenia was the only 1 out of 54 OSCE participating states not to support them.

125. Then the OSCE Chairman-in-Office made a statement with the inclusion of those principles. They are as follows:

– territorial integrity of the Republic of Armenia and the Azerbaijan Republic;

[88] OSCE Doc. 525/95.

- legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;

- guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all the Parties with the provisions of the settlement.

126. After the Lisbon Summit the office of the triple Co-Chairmanship, including Russia, France and the United States of America, was established in 1997 (since 1992 the Chairmen of the Minsk Conference were Italy in 1992-1993, Sweden in 1994, Russia and Finland in 1995-1996). Since April 1997 the negotiations were suspended and substituted by the visits of the Co-Chairmen to the region. On 1 June 1997, the Co-Chairmen presented the draft of a comprehensive agreement on the settlement of the Nagorny Karabakh conflict, which consisted of the Agreement on the cessation of the armed conflict and the Agreement on the status of Nagorny Karabakh. Despite the readiness of Azerbaijan to start constructive consultations on the essence of the mentioned documents, Armenia categorically rejected the proposed approach.

127. On 19-23 September 1997, the Co-Chairmen, during their visit to the region, presented new proposals based on the "stage-by-stage" approach to the settlement, according to which it was planned at the first stage to liberate six occupied districts, to deploy the OSCE peacekeeping operation, to return the displaced persons to the liberated territories and to restore main communications in the conflict zone. At the second stage the issues of Lachyn and Shusha were to be solved and the main principles of the status of Nagorny Karabakh were to be adopted. As a result, the OSCE Minsk Conference ought to be convened. On 10 October 1997, the Presidents of Azerbaijan and Armenia in their joint Statement in Strasbourg pointed out that "the recent proposals of the Co-Chairmen were a hopeful basis for the resumption of negotiations within the framework of the Minsk Group".

128. But after the resignation in February 1998 of President Levon Ter-Petrossian of the Republic of Armenia, and with coming to power in March 1998 of Robert Kocharian, the next visit of the Co-Chairmen to the region took place, when Armenia officially withdrew the consent to the proposals on the "stage-by-stage" settlement of the conflict.

129. On 9 November 1998, the Co-Chairmen put forward the proposals based on the concept of a "common state". According to this concept, Nagorny Karabakh would have the status of a state and a territorial unit in the form of a republic, which, together with Azerbaijan, would constitute the common state within the internationally recognized borders of Azerbaijan. Azerbaijan rejected those proposals insofar as they disregarded its sovereignty and contradicted the Lisbon principles. Since then no new proposals have been made and the Minsk process practically has reached a deadlock.

130. In order to give an additional impetus to the negotiations, since April 1999 direct talks between the Presidents of Azerbaijan and Armenia on the achievement of conflict settlement have taken place.

131. During the visit to the region in March 2002 the OSCE Minsk Group Co-Chairmen proposed to conduct negotiations at the level of special representatives of the Presidents of Azerbaijan and Armenia. The proposal was accepted by the heads of both states. On March 13-15 and July 29-30 2002, the two

meetings of the special representatives of the Presidents of Armenia and Azerbaijan took place near Prague.

132. Since 2004 the direct talks between the Foreign Ministers of Armenia and Azerbaijan have started within the so-called "Prague Process".

133. Nevertheless, despite positive signs in the drive to find a settlement to the conflict, the parties could not achieve a substantial breakthrough. The OSCE Minsk Group Co-Chairmen reported on 22 June 2006 to the OSCE Permanent Council that during the past seven months they intensified mediation efforts and worked hard to achieve the agreement of both sides on basic principles for a settlement. For that purpose they visited Baku and Yerevan three times together and several more times separately, organized two meetings of the Ministers for Foreign Affairs of Armenia and Azerbaijan and two summits between the Presidents of both states — first in Rambouillet in February and then in Bucharest in early June. For the first time since 1997, when the current format of the Co-Chairmanship of the Minsk Group was established, a joint Mission of Representatives of the Co-Chair countries at the Deputy Foreign Minister level travelled to the region in May in order to make clear to the Presidents of both states that 2006 was the necessary window of opportunity for reaching an agreement on Nagorny Karabakh.

134. According to the Co-Chairmen, a set of core principles had been proposed to Presidents Aliyev and Kocharian. They clarified that their approach was not aimed at solving all aspects of the conflict in one phase. Instead, in the words of the Co-Chairmen, their principles sought to achieve a major degree of progress but deferred some very difficult issues to the future and envisioned further negotiations.

135. Nevertheless, the Co-Chairmen stated that since the two Presidents failed to agree they had reached the limits of their creativity in the identification, formulation and finalization of these principles. They made clear that if the two sides were unable to agree on those principles, which had been put forward, it was now contingent upon the parties themselves to work together to reach an alternative agreement that both found acceptable. The Co-Chairmen pointed out that they saw no point in continuing the intensive shuttle diplomacy and in initiating further presidential meetings.

136. In response to the statement of the Minsk Group Co-Chairmen and comments made on that by the Armenian side, which has traditionally attempted to distort the reality of the settlement process, the Ministry of Foreign Affairs of the Republic of Azerbaijan clarified, inter alia, that definition of the legal status of the Nagorny Karabakh region of the Republic of Azerbaijan is impossible under the conditions of continuing occupation and ethnic cleansing and, accordingly, envisages liberation of the occupied territories of Azerbaijan, demilitarization of the whole conflict zone, provision of appropriate international security guarantees therein and return of the forcibly displaced population of Azerbaijan to their homes.

137. Azerbaijan once again reaffirmed its readiness to grant Nagorny Karabakh the highest status of self-rule within the internationally recognized territorial integrity of the Republic of Azerbaijan and based on its Constitution.

138. The Ministry also pointed out that with the aim of establishing inter-communal peace and harmony, as well as creating objective conditions for defining the region's status, and also taking into consideration the perspective of the region's further development, Azerbaijan would be prepared to review, in conformity with the

precedents existing in international practice, implementation of a complex of economic and other incentives for the population of Nagorny Karabakh after the restoration of its ethnic composition as of the pre-conflict period.

139. Along with that, Azerbaijan's adherence to continuing talks to achieve lasting and fair peace in the region has been repeatedly reaffirmed.

140. On 13 July 2007, the Co-Chairmen of the OSCE Minsk Group issued a statement in which they provided assessment of the emerging situation in the settlement process for the conflict in light of the meeting between the President of the Republic of Azerbaijan, Ilham Aliyev, and the President of the Republic of Armenia, Robert Kocharian, in St. Petersburg on 9 June 2007. The Co-Chairmen stated that during the meeting the Presidents concentrated their discussion on a limited number of obstacles that stood in the way of agreement on a set of "basic principles" for the peaceful settlement of the conflict. The Co-Chairmen further stated that the Presidents could not overcome these remaining differences. The Co-Chairmen in their statement took note of the initiative to organize a joint visit to the Nagorny Karabakh region, Yerevan and Baku of a group of intellectuals from Azerbaijan and Armenia. The Co-Chairmen welcomed and highly appreciated that event, which they considered as a first concrete confidence-building measure.

141. In its statement following the adoption by the General Assembly on 14 March 2008 of resolution 62/243, the Ministry of Foreign Affairs of the Republic of Azerbaijan made it clear that the draft paper on "basic principles" for the peaceful settlement of the conflict, prepared by the Co-Chairmen of the OSCE Minsk Group, contained more disagreements and unsettled issues rather than clarity.

142. On 2 November 2008, the Presidents of Armenia, Azerbaijan and the Russian Federation signed a Joint Declaration in Moscow. This document states, inter alia, that the signatories "will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles and norms of international law and the decisions and documents adopted in this framework, which will create favourable conditions for economic development and comprehensive cooperation in the region". Thus, the heads of three states underlined that the principles and norms of international law and the decisions and documents adopted in this framework, which undoubtedly includes in the first place the Security Council resolutions of 1993 as well as the General Assembly resolutions of 2006 and 2008, are the basis of a political settlement of the conflict between Armenia and Azerbaijan.

143. The conflict settlement issue is being routinely addressed at all OSCE Summits and Ministerial Council meetings, which stress generally the importance of the peace dialogue and efforts to achieve an early settlement of the conflict based on the norms and principles of international law.

144. The issue of the consequences of the conflict also remains on the agenda of the Council of Europe. Thus, consideration of the matter in question during the January 2005 session of the Council of Europe Parliamentary Assembly resulted in adoption of resolution 1416 entitled "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference". The Parliamentary Assembly reaffirmed the occupation of a considerable part of the territory of Azerbaijan and expressed its concern that the military action, and the widespread ethnic hostilities which preceded it, led to

large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing. The Assembly made it clear that the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe and reaffirmed the right of displaced persons from the area of conflict to return to their homes safely and with dignity. The Assembly also recalled the relevant resolutions of the Security Council and urged the parties concerned to comply with them, in particular by withdrawing military forces from any occupied territories.

IX. Position of Azerbaijan towards the conflict settlement

145. Although the mediation efforts conducted for already quite a long period of time within the framework of OSCE have not always been consistent and have yet to yield results, Azerbaijan continues to be committed to solving the conflict by political means and in a constructive manner.

146. The strategy of the Government of Azerbaijan is aimed at the liberation of all occupied territories, the return of forcibly displaced population to their homes, and the establishment of durable peace and stability in the Nagorny Karabakh region of Azerbaijan, as well as in the entire South Caucasus.

147. The final stage of the settlement process provides for elaboration and definition of the model and legal framework of the status of the Nagorny Karabakh region within Azerbaijan. Having said that, Azerbaijan believes that the process of definition of any status shall take place in normal peaceful conditions with direct, full and equal participation of the entire population of the region, namely, the Armenian and Azerbaijani communities, and in their constructive interaction with the Government of Azerbaijan exclusively in the framework of a lawful and democratic process.

148. A number of important steps have to be taken to reach a stage where the parties concerned can start consideration of the self-rule status for the Nagorny Karabakh region within Azerbaijan.

149. Firstly, the factor of military occupation must be removed from the conflict settlement context. Delay of return of the territories, which is not justified by any substantial reasons, can complicate the already difficult settlement process.

150. Secondly, the demographic situation which existed in the region before the outbreak of the conflict must be restored. It is clear that the status may only be defined through direct participation of both Azerbaijani and Armenian communities, living side-by-side in Nagorny Karabakh.

151. Thirdly, the regime of interaction between the central authorities of Azerbaijan and local authorities of the Armenian community must be established, until the new legal status of self-rule for the Nagorny Karabakh region is elaborated.

152. Another important element is a rehabilitation and economic development of the region. This step is essential for the process of normalization of life and restoration of peaceful coexistence and cooperation between the two communities. It should include restoration and development of economic links between the two communities, as well as between the central authorities of Azerbaijan and the Nagorny Karabakh region, and restoration and opening of communications for

mutual use by both sides in both directions. This will in particular provide a connection for the Armenian population of the Nagorny Karabakh region with Armenia, and for Azerbaijan with its Autonomous Republic of Nakhchyvan through the Lachyn road.

153. The fifth element entails cooperation between the two communities in the humanitarian sphere, and implementation of the special programmes on education and tolerance.

154. As for the implementation of the peace agreement to be signed between Armenia and Azerbaijan, it will be guaranteed by the commitments undertaken by the two sides under the Agreement, and by the relevant international guarantees.

155. It is obvious at the same time that the success of the peace process depends on a constructive approach of both sides, as well as on the active contribution of the international community, especially of the OSCE Minsk Group and its Co-Chairmen.

156. However, it is very difficult to hope for a substantial breakthrough judging from a position, on which Armenia persists. Indeed, it is exactly for the purpose of unilateral secession that Armenia wants to retain control over some occupied districts surrounding Nagorny Karabakh, prevents the displaced Azerbaijani population from returning to their homes and thus excludes equal consideration of opinions of both communities. It is obvious that this approach of Armenia cannot serve as a sound basis for the conflict resolution.

157. While being committed to solving the conflict peacefully and in a constructive manner, Azerbaijan, however, will never accept a solution compromising its territorial integrity, ignoring the rights of its people and legalizing the current status quo. To hold otherwise would be tantamount to legitimizing the consequences of ethnic cleansing and other serious breaches of the rule of law and human rights.

158. The conflict can only be solved on the basis of respect for the territorial integrity and inviolability of the internationally recognized borders of Azerbaijan, and peaceful coexistence of Armenian and Azerbaijani communities in the Nagorny Karabakh region, fully and equally enjoying the benefits of democracy and prosperity.

159. The continuation of the "no peace-no war" situation without concrete prospects for the soonest resolution of the conflict is the main source of instability in the whole South Caucasus.